THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 13.03.2007

\+ **WP (C) 8161/2005**

VARDHMAN PROPERTIES LTD ...Petitioner

- versus -

THE COLLECTOR OF STAMPS ...Respondents
GOVT OF NCT OF DELHI.

Advocates who appeared in this case:
For the Petitioner : Mr Sanjay Goswami.
For the Respondent No.1 : Mr Jagmohan Sabharwal, Sr Advocate with Ms Zubeda Begum, Ms Iram Majid and Mr Maneesh k Shukla.
For the Respondent/MCD : Ms Richa Kapoor.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

BADAR DURREZ AHMED, J (ORAL)

1. All these petitions are directed against the notices issued under Section 40 of the Indian Stamp Act, 1899 (hereinafter referred to as a "Stamp Act"). By virtue of these notices, deficient duty on account of stamp duty and transfer duty is being demanded from the petitioners alongwith a penalty equal to ten times of the deficient duty. The particulars of each of the cases would not be necessary for determining these petitions inasmuch as the questions are of a legal nature. It is sufficient to note that various properties were conveyed

by virtue of registered perpetual lease deeds in favour of the petitioners on account of the fact that they were successful in the auctions held by the DDA / MCD. The Collector of Stamps in each of the cases had issued a certificate with regard to the appropriate stamp duty and transfer duty to be paid in respect of each of the leases. The petitioners in each of the cases made the payment as per the certificates given by the Collectors of various districts.

2. It appears that subsequently by an order dated 29.08.2004 issued by the Divisional Commissioner, Delhi, it was noted that several instances had come to the notice where the Collectors of Stamps of different districts had taken different views in the method of calculation of duty in respect of these perpetual leases. The bone of contention was the manner of interpretation of Article 35 of Schedule IA to the Indian Stamp Act as applicable to Delhi. Another issue was that the transfer duty had also not been computed in the manner as indicated under Section 147 of the Delhi Municipal Corporation, 1952 (hereinafter referred to as DMC Act). Consequent upon the said order dated 29.08.2004, the impugned notices were issued in February, 2005 or thereabouts to all the petitioners directing them to pay up the differences in the purported deficient duty as well as to pay penalty equal to ten times of the deficient duty under the Stamp Act and the DMC Act. Reference to one such notice would be sufficient for the purpose to disposing of these writ petitions. The notice issued in CW 8161/2005 is reproduced hereinbelow :

" ***OFFICE OF THE COLLECTOR OF STAMPS : INA ROOM NO.6***

`D' BLOCK : DDA, VIKAS SADAN, NEW DELHI

F.No. SDM/CoS/Ch Pur/05/10/31 Dt. 9/2/05

NOTICE U/s 40 of Indian Stamp Act, 1899

Whereas an instrument styled as Perpetual Lease executed by President of India in favour of Vardhman Prop for a consideration of Rs.19111000/- was registered with Sub-Registrar VII(ND) on 3.6.2004. Whereas the duty chargeable on the instrument as per the prevailing rates prescribed by the Government works out to be Rs.1330604/- details of which are as follows:

STAMP DUTY	1079772/-
TRANSFER DUTY	250832/-
TOTAL	1330604/-

Whereas upon security it has been noticed that only an amount of Rs.1242215/- (Rupees twelve lac forty two thousand two hundred fifteen only) has been paid as duty. It is therefore clear that you have paid Rs.88389 (Rupees eighty eight thousand three hundred eighty nine only) less then the duty chargeable under rules.

Whereas instrument has been impounded U/s 33 of Indian Stamp Act, 1899 by the Sub-Registrar and a photocopy has been sent to COS (INA) for charging proper stamp duty along with penalty, if any.

Whereas you were directed by DDA to get the instrument stamped from the office of the Collector of Stamps DDA, INA, Vikas Sadan, new Delhi you have chosen to approach other COS who have not been vested with the powers to stamp these documents entered into a criminal conspiracy to cheat the govt. and caused a loss of Rs. 88389/- (Rupees eighty eight thousand three hundred eighty nine only) to the govt. exchequer.

In view of the facts stated above you are hereby directed to makeup the deficient amount of duty as stated above together with a penalty amounting to Rs.883890/- (Rupees eight lacs eighty three thousand eight hundred ninety only)

a sum equal to ten times of the deficient duty, within fifteen days of the issue of this notice failing which action will be taken against you as per law.

-sd-
COLLECTOR OF STAMPS (INA)

M/s., Shri Anil Kumar Jain, Director
K-16 A Kailash Colony, New Delhi."

3. Mr Sethi, the learned Senior counsel appearing for some of the petitioners and other counsel appearing for the petitioners submitted that the difference in the stamp duty component as demanded by the impugned notices have been deposited by the parties under protest. The learned counsel for the petitioners submitted that to resolve the issues involved in these cases, they are not pressing for the return of the stamp duty component inasmuch as the question of interpretation of Article 35 of Schedule IA of the Stamp Act can be said to be debatable. They do not want to prolong this matter any further and, therefore, they are not pressing their case insofar as the question of the difference with regard to the stamp duty as computed in the notices impugned herein are concerned. Therefore, the challenges that remain and survive in these petitions are with respect to the penalties that have been imposed both under the Stamp Act and under the DMC Act with regard to the Stamp Duty and Transfer Duty, respectively, as also the challenge to the difference in the transfer duty that is being demanded in the impugned notices.

4. Insofar as the question of penalty on the deficient amount of stamp duty is concerned, it is clear that Section 40 deals with the power of the Collector to impose penalty. Section 40 of the Stamp Act reads as under:

> "**40. Collector's power to stamp instruments impounded**. - (1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under Section 38, sub-section (2), not being an instrument chargeable with a duty not exceeding ten naye paise only or a bill of exchange or promissory notice, he shall adopt the following procedure:-
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> (a) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;
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> (b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of the five rupees; or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:
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> Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.
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> (2) Every certificate under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.
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> (3) Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he

has dealt with it as provided by the section, return it to the impounding officer."

A reading of the above provision makes it clear that the power to impose penalty can be exercised only when the Collector impounds any instrument under Section 33, or receives any instrument sent to him under Section 38, sub-section (2). In the present case the Collector has not impounded any instrument in exercise of his power under Section 33 because that occasion has not arisen. The question of Section 38 being applicable also does not arise. In view of the provisions of Section 40, the power to impose a penalty is only consequent upon the Collector impounding an instrument. Since that event has not taken place, there is no question of the Collector imposing any penalty. Therefore, the impugned notices to the extent that they impose penalties on account of deficient stamp duty cannot be sustained.

5. I now come to the question of the demand of deficient transfer duty by virtue of the impugned notices. Section 147 of the DMC Act reads as under:

> **"147. Duty on transfer of property and method of assessment thereto. -** (1) Save as otherwise provided in this Act, the Corporation shall levy a duty on transfers of immovable property situated within the limits of Delhi in accordance with the provisions hereafter in this section contained.
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> (2) The said duty shall be levied -
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> (a) in the form of a surcharge on the duty imposed by the Indian Stamp Act, 1899 (2 of 1899) as in force for the time being in the Union territory of Delhi, on every instrument of the description specified below, and

(b) at such rate as may be determined by the Corporation not exceeding five per cent, on the amount specified below against such instruments -

Description of instrument	***Amount on which duty should be levied***
(i) Sale of immovable property	The amount or value of the consideration for the sale, as set forth in the instrument.
(ii) Exchange of immovable property	The value of the property of the greater value, as set forth in the instrument.
(iii) Gift of immovable property	The value of the property, as set forth in the instrument.
(iv) Mortgage with possession of immovable property	The amount secured by the mortgage as set forth in the instrument.
(v) Lease in perpetuity of immovable property	The amount equal to one-sixth of the whole amount or value of the rent which would be paid or delivered in respect of the first fifty years of the lease as set forth in the instrument.
(vi) Contract for transfer of immovable property	Ninety per cent of the value of the consideration for the transfer as set out in the contract."

The contention of the learned counsel for the petitioners is that the word "or" in the expression "one-sixth of the whole amount or value of the rent" appearing in the second column as against the provision of Section 147(2)(b)(v) (lease in perpetuity of immovable property) would have to be given its natural meaning as an alternative. According to the learned counsel for the petitioners what the impugned notices seek to do is not only to impose a transfer duty equal to 1/6th of the amount of premium but also 1/6th of the value of rent calculated for the first 50 years of the lease. According to them,

only 1/6th of the amount of premium or the value of the rent can be taken, not both. It is further contended by them that since the provision has to be construed and interpreted, it is a well established principle that the benefit of any doubt has to go to the assessee, therefore, it is only 1/6th of the premium amount or the value of rent for the first 50 years of the lease, whichever is lower, that ought to have been taken into consideration.

6. On the other hand, Mr Sabharwal, the learned senior counsel appearing on behalf of the Collector of Stamps submitted that the computation as suggested by the Commissioner's order dated 29.08.2004 and computed by the Collector of Stamps is correct and that 1/6th of the premium as well as 1/6th of the rent for the first 50 years of the perpetual lease would have, both, to be taken into account.

7. There is a decision of a learned single Judge of this court where this very expression has been considered. That decision was rendered in the case of ***M/s Niagara Hotels & Builders (P) Ltd v Union of India & Ors : 65(1997) DLT 826***. Paragraph 12.3 of the said decision is relevant and the same reads as under :

> "12.3 The amount on account of duty on transfer of property collected by the defendants is stated in para 4(b) of the plaint, which fact has not been denied in para 4 of the written statement. From the contents of the written statement, filed on behalf of the defendant MCD, it is apparent that the defendant MCD *has taken into consideration the premium paid as well as 50 years rent* and after adding both the above mentioned components i.e., premium & rent the defendant MCD has calculated

> 1/6th of the same and then applied the rate of 5% to calculate the duty on transfer of property which is not permissible in accordance with the provisions of Section 147(2)(b)(v) of the Act. The word `OR' occurring in Sub-clause (v) of Clause (b) Sub-section(2) of Section 147 of the Act cannot be read or so interpreted as contended by the defendant-MCD. The defendant-MCD in the preliminary objections has contended that the initial amount paid to DDA for the purchase of plot in question is not `premium' but is a `rent'. Similar contention has been stated in para 2 of the written statement on merits. As per the case of the defendant, as put forth in the written statement, the word `premium' is to be treated as `rent' for the purpose of calculation of the amount of duty on transfer of property. In my opinion, the above interpretation is also not tenable in the eyes of law being contrary to the definition of the term `rent' as well as `premium' as defined in Section 105 of the Transfer of Property Act, 1882. Section 105 of the Transfer of Property Act, 1882 provides the definition of the word ` premium' as well as `rent' separately as under:
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> > "lessor, lessee, premium and rent defined – The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service, or other thing to be so rendered is called the rent."

With regard to this decision, Mr Sabharwal raised the plea that it was an ex parte decision. The same was immediately replied to by Mr Sethi by saying that the said decision has not been appealed against and was accepted by the respondents in that case.

8. Without entering into the arena of controversy with regard to the decision in ***Niagara Hotels & Builders (P) Ltd*** (supra), in my view, the expression "*amount or value*" has reference to rent and rent alone. This becomes clear by looking at the provisions of Section 147(2)(b)(i) which also

uses the expression *"amount or value"* but has relation to the sale consideration. This makes it clear that the word "amount" does not mean "premium". When it is used in connection of sale consideration, it refers to the quantum of the sale consideration. Similarly, in section 147(2)(b)(v), the expression "amount or value" has reference to the monetary quantum of the rent for the first 50 years of the lease. Both the words "amount" and "value" have reference to the said rent. It cannot, in my opinion, be said that "amount" refers to premium and "value" bears connection with rent. So, it is clear, under section 147(2)(b)(v) transfer duty would be leviable on 1/6th of the rent for the first 50 years of the lease.

9. This introduces a further complication in these cases and that is that the rent has been fixed only for the first 30 years of the lease period. Rent for the next 30 years of the lease is governed by clause (II) (16) (V) of the perpetual leases. The relevant sub-clause reads as under:

> "V) The rent hereby reserved shall be enhanced From the first day of January, Two thousand and Thirty Four and thereafter, at the end each successive period of thirty years, provided that the increase in the rent fixed at each enhancement, shall not at each such time exceed 100% of that immediately before the enhancement value of the site without buildings at the date on which enhancement is due and such letting value shall be assessed by the Collector or Additional Collector of Delhi as may be appointed by the Lessor.
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> Provided always that any such assessment of letting value for the purpose of this provision shall be subject to the same right on the part of this Lease or appeal from the orders of the said Collector or Additional Collector and within such

> time as if the same were an assessment by a Revenue officer under the Punjab Land Revenue Act, 1887 (XVII of 1887) or any amending Act, for the time being in force and the proceedings for or in relation to any such appeal shall be in all respects governed by the provisions of the said Act, in the same manner as if the same had been taken thereunder."

A plain reading of the above sub-clause makes it clear that after 30 years, the rent is to be increased but the quantum has been left undetermined. Only the maximum limit of 100% enhancement has been fixed. In my view, for the purposes of the present calculation, it would be appropriate if the ground rent for 30 years is continued for 50 years period for the purpose of computation of the transfer duty under Section 147. Resultantly, the transfer duty has to be computed on the basis of 1/6th of the rent payable at present for the first 30 year period but computed for the first 50 years.

10. Now, the only question that remains is with regard to the imposition of penalty on the deficient transfer duty. First of all, this is not a case in which penalty could be imposed because the computations themselves were doubtful depending on the interpretation of the statute. Secondly, in any event, the issue is no longer debatable in view of the decision of a Full Bench of this court in the case of ***M/s Sudarshan Talkies (Delhi) Pvt Ltd, New Delhi v The Collector of Stamps, New Delhi : AIR 1978 DELHI 112.*** The said decision followed an earlier Full Bench decision in the case of ***Dayal Singh v Collector of Stamps : AIR 1972 DELHI 131.*** The question that was considered by the Full Bench in ***Sudharshan Talkies*** (supra) was :

> *"Whether transfer duty under S. 147 of the Delhi Municipal Corporation Act which is recoverable as a surcharge is subject to the provisions of Ss. 33 and 40 of the Indian Stamp Act in regard to impoundment and penalty."*

The Full Bench decided the question in the negative and concluded that the view of the Chief Controlling Revenue Authority that " the provision of S. 147 is in the nature of increasing the stamp duty and consequently any default in the payment of this surcharge would attract all the provisions of the Stamp Act including impounding of documents and imposition of penalty" was unwarranted on a plain reading of S. 147. Therefore, no penalty could be imposed in respect of the transfer duty under the DMC Act.

11. The impugned notices are therefore set aside to the extent indicated above. The re-working of the transfer duty has to be done in the terms and manner indicated above and any charges / refunds shall be made accordingly. It is made clear that insofar as the demands under the Stamp Act are concerned, neither any further stamp duty in addition to the amounts already paid in terms of the notices is payable by any of the petitioners nor is any penalty chargeable from the petitioners. The exercise of re-working the transfer duty be completed within eight weeks.

These petitions are partly allowed to the extent indicated above. No costs.

BADAR DURREZ AHMED
(JUDGE)

March 13, 2007
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